

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

808P0713

## SENATE STATE AFFAIRS ENGROSSED NO. **SB 186** - 2/6/2008

Introduced by: Senators Knudson, Albers, Dempster, Gant, Gray, and Hansen (Tom) and  
Representatives Rhoden, Brunner, Cutler, Deadrick, Dykstra, Faehn,  
Heineman, Krebs, Olson (Russell), Rave, Turbiville, and Vehle

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding public records.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 1-26D-4 be amended to read as follows:

4 1-26D-4. Hearing examiners have all powers delineated in §§ 1-26-19.1 and 1-26-19.2 and  
5 shall hear all contested cases that arise under Titles 10 and 58 and chapter 1-27.

6 Section 2. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 The provisions of this Act do not apply to the Unified Judicial System or Public Utilities  
9 Commission.

10 Section 3. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 Any informal request for disclosure of documents or records shall be made to the custodian  
13 of the record. The custodian of the record may then provide the requestor with the document or  
14 record upon payment of the actual cost of mailing or transmittal and a fee not to exceed one



dollar per page, the actual cost of reproduction if greater than one dollar per page, or other fee established by statute or administrative rule. A requestor that makes an informal request requiring the dedication of staff time in excess of one hour may be required to pay the cost of the staff time necessary for the location, assembly, or reproduction of the public record.

Section 4. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

For any informal request reasonably likely to involve a fee in excess of fifty dollars, the custodian shall provide an estimate of cost to the requestor prior to assembling the documents or records and the requestor shall confirm in writing his or her acceptance of the cost estimate and agreement to pay. The custodian may exercise discretion to waive or reduce any fee required under this section if the waiver or reduction of the fee would be in the public interest.

Section 5. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

If an informal request is denied in whole or in part by the custodian of a document or record, a written request may be made by the requestor pursuant to this section:

(1) A written request may be made to the public record officer of the public entity involved. The public record officer shall promptly respond to the written request but in no event later than ten business days from receipt of the request. The public record officer shall respond to the request by:

- (a) Providing the record in whole or in part to the requestor upon payment of any applicable fees pursuant to sections 3 and 4 of this Act;
- (b) Denying the request for the record; or
- (c) Acknowledging that the public record officer has received the request and providing an estimate of the time reasonably required to further respond

1                   thereto;

2       (2)   Additional time to respond to the written request under subsection (1)(c) of this  
3           section may be based upon the need to clarify the nature and scope of the written  
4           request, to locate and assemble the information requested, to notify any third persons  
5           or government agencies affected by the written request, or to determine whether any  
6           of the information requested is not subject to disclosure and whether a denial should  
7           be made as to all or part of the written request;

8       (3)   If a written request is unclear, the public record officer may require the requestor to  
9           clarify which records are being sought. If the requestor fails to provide a written  
10          response to the public record officer's request for clarification within ten business  
11          days, the request shall be deemed withdrawn and no further action by the public  
12          records officer is required;

13      (4)   If the public record officer denies a written request in whole or in part, the denial  
14          shall be accompanied by a written statement of the reasons for the denial;

15      (5)   If the public record officer fails to respond to a written request within ten business  
16          days, or fails to comply with the estimate provided under subsection (1)(3) of this  
17          section without provision of a revised estimate, the request shall be deemed denied.

18      Section 6. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as  
19      follows:

20          If a public record officer denies a written request in whole or in part, or if the requestor  
21          objects to the public record officer's estimate of fees or time to respond to the request, a  
22          requestor may within ninety days of the denial commence a civil action by summons or, in the  
23          alternative, file a written notice of review with the Office of Hearing Examiners. The notice of  
24          review shall be mailed, via registered or certified mail, to the Office of Hearing Examiners and

shall contain:

- (1) The name, address, and telephone number of the requestor;
- (2) The name and business address of the public record officer denying the request;
- (3) The name and business address of the agency, political subdivision, municipal corporation, or other entity from which the request has been denied;
- (4) A copy of the written request;
- (5) A copy of any denial or response from the public record officer; and
- (6) Any other information relevant to the request that the requestor desires to be considered.

Section 7. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

Upon receipt, the Office of Hearing Examiners shall promptly mail a copy of the notice of review filed pursuant to section 6 of this Act and all information submitted by the requestor to the public record officer named in the notice of review. The entity denying the written request may then file a written response to the Office of Hearing Examiners within ten business days. If the entity does not file a written response within ten business days, the Office of Hearing Examiners shall act on the information provided. The Office of Hearing Examiners shall provide a reasonable extension of time to file a written response upon written request or agreement of parties.

Section 8. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

Upon receipt and review of the submissions of the parties, the Office of Hearing Examiners shall make written findings of fact and conclusions of law, and a decision as to the issue presented. Before issuing a decision, the Office of Hearing Examiners may hold a hearing

1 pursuant to chapter 1-26 if good cause is shown.

2 Section 9. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 The aggrieved party may appeal the decision of the Office of Hearing Examiners to the  
5 circuit court pursuant to chapter 1-26.

6 Section 10. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 The public record officer for the state is the secretary, constitutional officer, elected official,  
9 or commissioner of the department, office, or other division to which a request is directed. The  
10 public record officer for a county is the county auditor or the custodian of the record for law  
11 enforcement records. The public record officer for a first or second class municipality is the  
12 finance officer or the clerk or the custodian of the record for law enforcement records. The  
13 public record officer for a third class municipality is the president of the board of trustees or the  
14 custodian of the record for law enforcement records. The public record officer for an organized  
15 township is the township clerk. The public record officer for a school district is the district  
16 superintendent or CEO. The public record officer for a special district is the chairperson of the  
17 board of directors. The public record officer for any other entity not otherwise designated is the  
18 person who acts in the capacity of the chief financial officer or individual as designated by the  
19 entity.

20 Section 11. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 The following forms are prescribed for use in the procedures provided for in sections 3 to  
23 10, inclusive, of this Act, but failure to use or fill out completely or accurately any of the forms  
24 does not void acts done pursuant to those sections provided compliance with the information

required by those sections is provided in writing.

**NOTICE OF REVIEW**

**REQUEST FOR DISCLOSURE OF PUBLIC RECORDS**

Date of Request: \_\_\_\_\_

Name of Requestor: \_\_\_\_\_

Address of Requestor: \_\_\_\_\_

Telephone Number of Requestor: \_\_\_\_\_

Type of Review Being Sought:

\_\_\_\_ Request for Specific Record

\_\_\_\_ Estimate of Fees

\_\_\_\_ Estimate of Time to Respond

Short Explanation of Review Being Sought Including Specific Records Requested:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of Public Record Officer: \_\_\_\_\_

Address of Public Record Officer: \_\_\_\_\_

Name of Governmental Entity: \_\_\_\_\_

Address of Governmental Entity: \_\_\_\_\_

*You must include with the submission of this Notice of Review - Request for Disclosure of Public Records the following information: (1) A copy of your written request to the public record officer; (2) A copy of the public record officer's denial or response to your written*



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**SOUTH DAKOTA OFFICE OF HEARING EXAMINERS**  
**NOTICE OF REQUEST FOR DISCLOSURE**  
**OF PUBLIC RECORDS**

TO: (Public Record Officer & Governmental Entity) \_\_\_\_\_

\_\_\_\_\_ has filed a Notice of Review - Request for Disclosure of Public Records. A copy of the Notice of Review - Request for Disclosure of Public Records is attached for your review.

You may file a written response to the Notice of Review - Request for Disclosure of Public Records within ten (10) business days of receiving this notice, exclusive of the day of service, at the following address:

Office of Hearing Examiners  
500 E. Capitol Avenue  
Pierre, South Dakota 57501  
605-773-6811

The Office of Hearing Examiners may issue its written decision on the information provided and will only hold a hearing if it deems a hearing necessary.

If you have any questions, please contact the Office of Hearing Examiners.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Office of Hearing Examiners